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August 20, 2019

Hon. Edgardo Ramos
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: SEC v. Honig, et al.;
No. 18 Civ. 8175 (ER)

Dear Judge Ramos:

We write on behalf of Defendant Robert Ladd to express our serious concern about the letter dated August 8, 2019 from Plaintiff Securities and Exchange Commission to the Court (Dkt. 157), in which the Commission states that it “continues to investigate matters that involve conduct of certain Defendants that is distinct from and post-dates that charged” in the Amended Complaint. The SEC’s letter, which it filed without providing Defendants any notice or explanation, serves no apparent purpose and will inevitably cause additional reputational harm to Mr. Ladd and the other Defendants. That the SEC would *sua sponte* state in a public filing that it is investigating one or more Defendants represents a remarkable deviation from longstanding Commission policy not to confirm, deny, or otherwise comment on its investigations. See, e.g., 17 C.F.R. § 203.5 (“Unless otherwise ordered by the Commission, all formal investigative proceedings shall be non-public.”).

The Commission’s August 8 letter makes clear that it is continuing to gather evidence through its administrative authority. See, e.g., 15 U.S.C. § 78u(b)(1). The Commission’s use of that authority to conduct an ongoing investigation of one or more Defendants for unspecified conduct deprives Defendants of the protections of the Federal Rules of Civil Procedure and thus circumvents this Court’s authority. For example, the SEC may be issuing subpoenas for testimony or documents without complying with the notice provisions of Rule 45(a)(4) of the Federal Rules. Although the Commission commits to produce any documents it collects in its ongoing investigation if “relevant” to the matters alleged in the Amended Complaint, Mr. Ladd does not know what and whom the Commission is continuing to investigate and thus he has no meaningful ability to assess whether the Commission is adhering to its discovery obligations, has properly determined relevance, or is otherwise misusing its investigative powers.

Accordingly, we respectfully request that the Court order the Commission to advise the parties and the Court, under seal, of the additional matters the Commission is continuing to investigate (including by identifying the specific Defendants, their alleged conduct, and the SEC offices



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conducting each investigation). We are, of course, prepared to discuss the matter at the conference on September 11, 2019.

Respectfully submitted,

/s/ Randall R. Lee

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